Filed 3/30/05 In re Harmony B. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re HARMONY B., a Person Coming Under the Juvenile Court Law. ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent. v. NORENE B.., Defendant and Appellant.	A107481 (Alameda County Super. Ct. No. J189491)

Norene B. appeals from the dispositional order entered in dependency proceedings concerning her daughter, Harmony B. Having carefully reviewed the briefs and record, we find no error and affirm.

BACKGROUND

On April 2, 2004, the Alameda County Social Services Agency (the Agency) filed a Welfare and Institutions Code section 300[1] petition on behalf of sixteen-year-old Harmony B. alleging a substantial risk of harm or neglect due to her mother's mental health problems. The petition alleged that Norene, who is schizophrenic, had been admitted to a psychiatric hospital at least 23 times, had not taken her prescribed

medications for 10 years, and had episodes that interfered with her ability to parent. Norene would tell Harmony her relatives were the devil and that the whole family has gone against the Holy Spirit. She said God spoke to her and that she must wash the demons off of Harmony. Norene would also walk up and down the street with Harmony, telling passers-by that God wanted them to listen. Norene had kept Harmony from attending school, permitting her to attend only two periods of class each day in 2003 and keeping her out of school entirely in 2004. Harmony was afraid of Norene's behavior and had run away twice in the preceding six months.

The petition also alleged that Norene was resistant to the Agency's efforts to provide mental health and home services. She had ignored requests to enroll Harmony in school, threatening to leave the state with her daughter rather than comply.

On April 5, 2004, the juvenile court ordered Norene to allow the Agency to inspect her home and speak with Harmony. Norene permitted the caseworker to interview Harmony but refused to allow a home assessment. Harmony told the caseworker that she wanted to live with her sister Ebony so she could attend school and be less isolated. The worker's two subsequent attempts to contact Harmony at home were unsuccessful, and Norene claimed not to know her daughter's whereabouts. By April 16 she had not enrolled Harmony in school. At the Agency's request, the court issued a protective custody warrant. On April 26 Harmony was placed in protective custody in Ebony's home.

The detention hearing was held April 27, 2004. Norene initially declined appointed counsel. The court urged her to speak to a panel attorney, but explained that she was free to decline the representation if she so wished. The court found substantial danger to Harmony's physical or emotional health, that there were no reasonable means to protect her short of removal from Norene's custody, and that reasonable efforts had been made to prevent the need for removal. Harmony was ordered detained in her sister's home.

---

1 Unless otherwise indicated, all statutory citations are to the Welfare and Institutions Code.

After Norene attempted to have an unsupervised visit with Harmony, on May 11, 2004 the court issued an order restraining her from contacting either daughter or removing Harmony from Ebony's home. At a May 26 hearing the court continued the restraining order for another year and granted supervised visitation.

The jurisdiction report recommended that the court order Norene to comply with psychological evaluations to determine what, if any, reunification services might be appropriate. Harmony was doing well in her sister's home. Although she could not reenroll in high school until September, Ebony had arranged for a private independent study program until then. Norene had been hostile during phone calls and visits, encouraging Harmony to come home and telling her that Ebony was the devil. Harmony did not want further contact with her mother.

Harmony related that her problems started in January 2003. Her mother had let her attend only choir and science. She had received a D in choir, an A plus in science, and failed her other classes. Harmony and Norene moved in June 2003, but Norene refused to pick up transfer papers from Oakland High necessary to enroll Harmony in school in their new neighborhood.

Norene refused to let Harmony see friends and family. According to Harmony, Norene said God speaks to her. Other people had told Harmony her mother was schizophrenic. Sometimes Norene would not hear Harmony talk to her or would answer 30 minutes later. She did not take her prescribed medication. Harmony reported her mother had been very hostile during phone calls and visits, commenting about her clothes and saying her family was evil.

Ebony stated Norene was schizophrenic with a long history of hospitalizations. In her view, Norene took care of Harmony but isolates her inappropriately from family and friends. She described Norene as a very smart woman who tried to outwit professionals working with her.

The jurisdictional hearing took place between May 17 and June 7, 2004. Norene came to the May 17, 2004 hearing but refused to enter the courtroom. Her appointed counsel reported that Norene was very articulate and able to express her concerns, but did

not seem able to actively participate in the proceedings. On June 7 the court sustained the petition and ordered Norene to comply with a psychological evaluation for purposes of disposition.

The disposition report recommended that the court deny reunification services. Norene had missed two appointments for psychological evaluations, had not responded to referrals for psychological treatment and refused medication. She insisted it was the school district's fault that Harmony had not been in school, although, the report stated, her complaint with the school district had little basis in fact.[2]

Harmony was doing well in her sister's home and participating in independent study. Her mother would often yell at her on the phone and tell her to come home. Harmony did not want to have visits with her mother.

Norene did not appear at the disposition hearing on July 6, 2004. The court denied services and declared Harmony a dependent child. It found clear and convincing evidence that returning her home would cause a substantial danger to her and there were no reasonable alternative means to protect her despite reasonable efforts to return Harmony to her mother's care.

On July 12, 2004 Norene sent the juvenile court a "Complaint of Misjudgment," accusing the Oakland Unified School District and the Agency of civil harassment and claiming that Ebony and the case worker had falsified information and involved Harmony in a "fraudulent situation." On August 10 she filed a section 388 petition claiming, as changed circumstances, that Harmony had lost her mother's care and was wearing skirts of "shameful length." The hearing was set for September 10, 2004.[3]

On August 12, 2004 Norene appealed from the July 6, 2004 order. On October 29, 2004 she filed an "amended" notice of appeal, specifying "all orders against appellants Norene and Harmony [B.] 07-06-04 and other." Norene refused appointed appellate counsel, opting to proceed in pro per.

---

2 Her disputes with the school district are the subject of a civil action Norene is pursuing against various public entities including the Oakland Unified School District and the Agency.

3 The record does not include an order on the petition and Norene's appellate brief does not appear to address it.

DISCUSSION

Much of Norene's appellate brief, filed without assistance of counsel, consists of factual narrative presenting her view of her disagreements with the Oakland Unified School District, the Agency and other public entities. Because our authority as an appellate court is limited to reviewing the specific rulings of the juvenile court for legal or evidentiary error, a substantial portion of this narrative is simply not relevant to the issues before us for review. As we understand Norene's arguments, those issues are: (1) whether the juvenile court violated her rights by appointing counsel to represent her; and (2) whether the evidence supports the dispositional order.

As to legal representation, the record discloses that Norene acquiesced to the appointment of counsel. The court informed Norene of her right to decline the representation if she wished. She apparently chose not to do so. Certainly the record does not indicate otherwise. Accordingly, she may not now complain of that decision on appeal. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 388, 390-391, pp. 439-442.)

Norene's remaining contentions seem to focus on the factual basis for removing Harmony from her custody.[4] Her brief reiterates her views that Harmony's failure to attend school was not her fault; that the Agency provided false information about her case; that the Agency, the city and the state violated her parental rights by placing Harmony with her sister; and, generally, that she cared appropriately for her daughter while Agency personnel, police offers, the public defender and Ebony abused and neglected the minor.

In assessing the evidence supporting the removal of a child from her parent's custody, this court's authority is strictly circumscribed. Our task is to review the record in the light most favorable to the juvenile court's ruling to determine whether there is substantial evidence from which a reasonable trier of fact could make the findings

---

[4] As her brief does not challenge the denial of reunification services, we do not address that aspect of the dispositional order.

necessary to remove the minor.[5] (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694.) Here, although Norene seemingly challenges the factual necessity for the removal, her brief fails to set forth the evidence supporting the trial court's findings. " 'When appellants challenge the sufficiency of the evidence, all material evidence on the point must be set forth *and not merely their own evidence*. [Citation.] Failure to do so amounts to waiver of the alleged error and we may presume that the record contains evidence to sustain every finding of fact.' [Citation.]" (*Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 317, italics added; *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) In light of the extreme inadequacy of Norene's briefing in this regard, we are compelled to treat this claim as waived.

While summary disposition of Norene's evidentiary contention is thus warranted, we nevertheless observe that the evidence supports the dispositional finding. "A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136.) The evidence showed Norene was schizophrenic, has been admitted to a psychiatric hospital 23 times. She was supposed to take medication but would not. She demonstrated bizarre behavior including beliefs that her relatives were the devil and that God spoke to her. She isolated herself from friends and family. Harmony had already run away from home twice, creating a significant danger to her physical and emotional health, safety and well-being. Moreover, Norene prevented her from attending school for significant periods of time. "Failing to attend school regularly not only deprives the children of an education, but also of the social interaction and 'peer relationships necessary for normal growth and

5 Section 361 subdivision (c)(1) provides in relevant part that: "A dependent child may not be taken from the physical custody of his or her parents . . . unless the juvenile court finds clear and convincing evidence of any of the following: [¶] (1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody."

development', . . ." (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388.) In sum, substantial evidence supports the court's ruling.

DISPOSITION

The judgment is affirmed.

_____
Corrigan, J.

We concur:

_____
McGuiness, P.J.

_____
Pollak, J.

A107481, *In re Harmony B.*